

REMARKS

In response to the aforementioned Office Letter, the Examiner again restricted the application into several alleged additional species. As the Examiner correctly notes, this is the second restriction requirement in a row, in connection with this application.

At the outset, the applicant must express its concern over the fact that this application has been pending for approximately 17 months, and to date, prosecution of the application has not been advanced at all. Rather than to examine the application on its merits, the U.S. Patent and Trademark Office seems intent on issuing restriction requirements which largely have little value in connection with the present application. When the U.S. Patent and Trademark Office finally gets around to examining the application on its merits, it will probably be close to at least two years of pendency before that time. This delay by the U.S. Patent and Trademark Office has literally caused the applicant a loss of its two years on the life of its patent.

In addition to the fact that the prosecution of this application on its merits has been delayed, the applicant is being put through the additional time consuming and expensive burden of responding to piecemeal restriction requirements. There is essentially no reason why this restriction requirement could not

have been combined with the first restriction requirement. The cost alone to the applicant has been substantial and, again, has not really advanced the prosecution of the subject matter of this application. Moreover, if the Examiner adheres to the restriction requirement, as now set forth, the applicant could be required to file at least twenty four divisional patent applications to fully cover the scope of the invention. This type of restriction, coupled with the substantial delay already encountered, can only be described as outrageous.

It may be appreciated that the efforts to respond to these restrictions are quite substantial, not only in terms of cost, but in terms of the time required to fully prosecute the subject matter of this application.

In effect, it appears as though the applicant is being persecuted by filing an extensively sized application, which contains numerous components forming part of the same invention. The application is admittedly large, and this is only a result of the applicant setting forth a complete and full disclosure of the best mode of the invention. However, that, in and of itself, should not be a justification for making a multi-way restriction requirement of this type.

It appears that the restriction set forth by the Examiner is based on individual components of an invention, most of which are necessary for the operation of the entire system, as claimed. It

is to be noted that the applicant has claimed the first alleged invention, that is, the buoyant pool cover drive, pursuant to the first restriction requirement. In other words, the applicant has elected the broad concept of the automatic pool cover system for the buoyant pool covers. In substance, the applicant is claiming the overall system. With this additional restriction requirement, the Examiner appears to be taking merely pieces of the invention and arguing that they are different species.

The Examiner essentially argues that there are different species for the travel limiter, different species for the brake, and different species for the control system. In addition, the Examiner further argues that some of the species do not have figures associated therewith, and are therefore identified by terms used in the disclosure. This type of restriction is utterly without foundation, in law or in fact. As the Examiner knows, in order to claim a portion of an invention, it must be illustrated. ^{wrong} By definition, if there is no illustration, there is essentially no claim. Consequently, this type of restriction requirement does not appear to advance the prosecution of the subject matter of this application.

Finally, the applicant is at a loss to understand how and why this restriction requirement is being advanced at this point in time, particularly when the applicant has already elected to prosecute those claims drawn to the overall pool cover system. The

applicant has not elected to prosecute claims specifically drawn to the travel limiter, which was the subject matter of one of the alleged inventions. Consequently, the applicant does not understand why a restriction requirement would now be set forth requiring the applicant to pick one of the alleged species of a travel limiter when, for example, the travel limiter has not been elected for prosecution in this application. The applicant is therefore at a total loss to even understand how this restriction requirement will advance anything with respect to the instant application.

The applicant is also at a loss to understand how the Examiner set up the species restriction in the manner as set forth. The applicant literally had prepared a type of flow chart set forth in Figure 1, showing the various embodiments of the invention. As a simple example, the first system would be that of:

- 1) the power pack 20,
- 2) the hydraulic motor 22,
- 3) the worm gear reducer 24, and
- 4) the travel limiter with flow diverter valve 41.

A second system would be that of:

- 1) the power pack 20,
- 2) the hydraulic motor 22,
- 3) the one way locking ratchet and
- 4) hydraulic actuator 35,

- 5) the hydraulic counter balance or brake valve 37, and
- 6) the travel limiter 38.

A third system would be that of:

- 1) the power pack 20,
- 2) the hydraulic motor 22,
- 3) the worm gear reducer 24, and
- 4) the encoder 26.

A fourth system would be that of:

- 1) the power pack 20,
- 2) the hydraulic motor 22,
- 3) the worm gear reducer 24, and
- 4) the mechanical over travel stop 27, or otherwise,
- 5) the travel limiter with hydraulic flow blocking 38.

Finally, a fifth possible subsystem would be that of

- 1) the power pack 20,
- 2) the hydraulic motor 22,
- 3) the hydraulic motor with internal holding brake 44,
- 4) the hydraulic counter balance or brake valve 37, and
- 5) the encoder 26.

These are the most likely possible combinations which could be generated in accordance with the invention. It is believed that the species restriction may be based on these five individual systems. Consequently, the species restriction, as adopted by the

Examiner, is actually at odds with the various species which could be used, as shown in the flow chart of Figure 1.

In addition to the foregoing, there are several problems with the species, as set forth by the Examiner.

5 When considering the brake, it is also noted that the braking action could be provided by a gear reducer. In fact, the gear reducer is a mechanism which was used for a braking action by Vandergrath in the initial underwater system developed by Vandergrath. Moreover, by using a ratchet mechanism, there is no
10 need for an actual brake. In fact, the ratchet mechanism may well prove to be the preferred means for providing any braking action. In this respect, an actual separate brake is not required.

 With regard to the alleged species of the brake, the Examiner set forth a return check valve as a species. However, the return
15 check valve does not constitute a brake. In its place, the applicant has identified that "return check valve" as a "ratchet mechanism". However, as indicated, the ratchet itself is not really a brake but can provide the equivalent of a braking action. In this way, the ratchet will allow for winding of the drum for
20 winding the pool cover onto the drum, but without releasing same will not allow for overriding or unwinding of the drum.

 It should also be noted, particularly by reference to Figure 1, that it is possible to use a worm gear reducer as a brake mechanism. It is also possible to use the hydraulic counter

balance valve 37, in conjunction with the worn gear reducer 24. This will also operate as a very effective braking mechanism, in accordance with the present invention.

In substance, it is to be recognized that there are three main sections to the invention, and this can be readily seen by reference to Figure 1. The first section is that of the power pack, namely, all of the electrical components to the left of the broken line in Figure 1. The second main section is the drive section located between the power pack and the various travel limiting mechanisms as shown. The third main section is that of the timing section, or so-called "travel limiting section," including for example, the hydraulic post generator, the encoder, the mechanical over travel stop system, etc.

With regard to the control circuit, a careful review of Figures 12, 13 and 14 will reveal that the control system is essentially the same. The only difference is that of controlling the travel limiter in the lower portion of each of Figures 12, 13 and 14. The major differences rely on the actual arrangement of the valving and the operation thereof. Consequently, it is believed that a restriction with regard to the control system would not really accomplish anything, except to duplicate efforts by both the applicant and the U.S. Patent and Trademark Office.

It is also urged that the applicant in this patent application is an applicant in other U.S. applications, and in many issued U.S.

patents, as well as many foreign patents. The applicant herein is the president of a company which produces and sells pool covers, of the type in the instant application, and of the type illustrated and described in other numerous U.S. patents. The point is that the applicant is thoroughly familiar with the state of the prior art, and has even described that prior art in the preamble portion of the instant application. It is highly doubtful that the applicant would find it necessary to resort to claiming individual types of brakes or the like, for that matter, in order to obtain allowance of the subject matter in the instant application. The applicant has studied that prior art known to the applicant, and it is believed that the claims, as submitted herewith, contain allowable subject matter. Consequently, it is urged that this restriction requirement will ultimately end up as an exercise in futility.

The applicant would urge the U.S. Patent and Trademark Office to re-form the restriction requirement and, essentially, adopt that of the main five species, as set forth above by the applicant. The applicant would be pleased to identify all claims readable on that proposed five way species arrangement, if the U.S. Patent and Trademark Office wishes to adopt same.

In any event, and in an effort to be responsive, the applicant has again prepared another chart, setting forth those claims

readable on each of the species for the travel limiter, the brake and the control system. Please see the following chart:

<u>TRAVEL LIMITER</u>				
<u>Generic</u>	<u>Figure 6</u>	<u>Figures 15-17</u>	<u>Figure 18</u>	<u>Rotary Encoder</u>
	Hard stop		Ratchet	
1-3				
4-5				
7	6	9		8
13-16	10	10, 27		
19-23		12		
38-40	17	17		
41	18	18		
	24	24		
42		25		
	27	26		
	28			
	43	43		
	44	44		
	45	45		
	46	46		
	47	47		
	48	48		

<u>BRAKE</u>					
<u>Generic</u>	<u>Figure 6</u>	<u>Internal</u>	<u>Counter Balance</u>	<u>Return Check Valve (Ratchet Mechanism)</u>	<u>Drive Ratio</u>
	Disc brake		Ratchet	Not braking	
1-3		4	21	22	
5,6					
	20				
13-16		23			
19, 24					
25					
38-40					
39					
41					
		42			
43					
44					
45					
46					
47					
48					

<u>CONTROL SYSTEM</u>			
<u>Generic</u>	<u>Figure 12</u>	<u>Figure 13</u>	<u>Figure 14</u>
1-28			
38-48			

In the above chart, since the travel limiter, the brake and the control system were each identified as including numerous

separate species, the applicant has also identified the claims generic to those individual species or subspecies. For example, for the travel limiter, which includes four alleged subspecies, the applicant has identified those claims which are generic to the four subspecies. The same holds true with the brake mechanism and the control system. In addition, the applicant has determined that all of Claims 1, 3, 5, 13-16, 19, 38 and 40, are generic to all aspects and all alleged species or subspecies, in the instant application.

The applicant provisionally elects to prosecute those claims drawn to the invention identified as a pool cover system, and as identified in its amendment responsive to the restriction requirement of June 27, 2002. In addition, the applicant elects to prosecute, to the extent necessary, that subspecies of the travel limiter shown in Figures 15-17. The applicant provisionally elects to prosecute, to the extent necessary, that subspecies of the invention, shown as the worm gear reducer functioning as a brake in the alleged species, relating to the brake. Finally, it is noted that all of the claims in the elected invention are generic with respect to the control system.

Based on the foregoing, for purposes of the travel limiter, the applicant provisionally elects to prosecute generic Claims 1-3, 4, 5, 7, 13-16, 19-23, 38-40, 41 and 42, as well as specie Claims 6, 10, 17, 18, 24, 27, 28, 43-48. With respect to the brake, the applicant provisionally elects to prosecute the generic Claims 1-3,

5, 6, 8-12, 13-16, 19, 24, 25, 38-40, 41, 43-48, as well as claims drawn to the worm gear reducer brake, namely, Claims 4, 7, 23 and 42.


After having prepared the claim chart as set forth above with regard to each of the alleged species and subspecies, it is noted, again, that these claims will not necessarily correspond to the claims set forth in the earlier species restriction. As a result, the applicant has attempted to rely upon the invention division set forth in the earlier Office Action, and the species restriction set forth in this Office Action. Beyond this, the applicant is in a complete quandary as to how the U.S. Patent and Trademark Office is treating that first restriction requirement. As a result, and with all due consideration to the Examiner who may be attempting to make this case more manageable from an examination standpoint, it is urged that at this point in time, total confusion as to elected inventions and elected claims has resulted.

Finally, it is noted that with regard to both the travel limiter and the brake and the control system, there are numerous

generic claims in each category. Therefore, the applicant respectfully elects an examination on all of Claims 1-28 and 38-48, in the instant application.

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Respectfully submitted,

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